

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)

Joint Petition for Expedited Rulemaking)
Establishing Minimum Notice Requirements)
For Detariffed Services)

Policy and Rules Concerning the Interstate,)
Interexchange Marketplace, Implementation)
Of Section 254(g) of the Communications Act of 1934,)
As Amended)

CI Docket No. 02-22

REPLY COMMENTS OF IDT CORPORATION

IDT Corporation (“IDT”), by its attorneys and pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) February 6, 2002 *Public Notice*,¹ submits its Reply Comments in response to the Initial Comments filed² in the above-captioned matter seeking modification of the Commission’s *Second Report and*

¹ *Pleading Cycle Established for Comments on Joint Petition Seeking Expedited Rulemaking Filed by AARP, Consumer Action, Consumer Federation of America, Consumers Union, the Massachusetts Union On Public Housing Tenants, the National Association of Regulatory Commissioners, the National Association of Consumer Agency Administrators, the National Association of State Utility Consumer Advocates and the National Consumers League*, CI Docket No. 02-22, DA 02-271 (Rel Feb. 6, 2002) (“*Public Notice*”).

² “Comments of the Alabama Public Service Commission” (“Alabama”) (filed March 11, 2002), “Comments of Americatel Corporation” (“Americatel”) (filed March 11, 2002), “Comments of the Association of Communications Enterprises” (“ASCENT”) (filed March 11, 2002), “AT&T Comments” (“AT&T”) (filed March 11, 2002), “Comments of the Competitive Telecommunications Association” (“CompTel”) (filed March 11, 2002), “Comments of Sixteen Consumers” (filed March 11, 2002), “Comments of the Public Service Commission of the State of Missouri” (“Missouri”) (filed March 11, 2002), “Comments of the Public Service Commission State of Montana” (“Montana”) (filed March 8, 2002), “Comments of NCTC Long Distance, Clarks Long Distance and NNTC Long Distance” (“Nebraska Carriers”) (filed March 11, 2002), “Comments of Qwest Communications International, Inc.” (“Qwest”) (filed March 11, 2002), “Comments of SBC Communications Inc. In Response To Joint Petition” (“SBC”) (filed March 11, 2002), “Comments of Verizon” (“Verizon”) (filed March 11, 2002), “WorldCom Comments,” (“WorldCom”) (filed March 11, 2002), “Comments of Moultrie Infocomm, Inc. (“Moultrie”) (filed March 11, 2002) and “Comments of Sprint Communications Company L.P. (“Sprint”) (filed March 11, 2002).

*Order*³ regarding consumer notice for changes to the rates, terms or conditions for detariffed domestic interexchange services.

ARGUMENT

In its Initial Comments,⁴ IDT opposed Petitioners' request that the Commission initiate an expedited rulemaking or further proposed rulemaking to impose a minimum 30-day notice requirement on recently detariffed domestic toll services. IDT's opposition to the Petition, as well as the reasons for its opposition, is supported by several of the commenters in this proceeding.⁵ Specifically, several commenters agree with IDT that: (1) Petitioners fail to demonstrate a marketplace failure that compels a rulemaking;⁶ (2) the Commission's complaint procedures are adequate to respond to any unreasonable actions by carriers;⁷ and (3) the competitive marketplace will ensure that carriers respond to the needs of their customers.⁸ IDT maintains that for these reasons the Commission should deny Petitioners' request.

IDT's Initial Comments noted that Petitioners improperly focused on certain carriers' reservation of their right to implement rate increases without notice rather than the actual policies implemented by those carriers to provide notice of rate increases.⁹ As demonstrated in the comments filed by several carriers, different policies have been implemented to respond to subscribers' needs and expectations. For example, Verizon notifies its subscribers by bill insert, invoice, postcard, letter, phone call or message,

³ *In the Matter of Policy and Rules Concerning the Interstate, Interexchange marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730; 4 Comm. Reg. (P&F) 1199 (October 29, 1996)(FCC 96-424).

⁴ "Opposition of IDT Corporation," (filed March 11, 2002)("IDT Initial Comments").

⁵ *See generally*, SBC, Nebraska Carriers, Moultrie, Verizon and ASCENT.

⁶ Verizon at 2, SBC at 1, Sprint at 3 and Qwest at 3.

⁷ Verizon at 4, Nebraska Carriers at 3, SBC at 5 and ASCENT at 9-10.

⁸ Nebraska Carriers at 2, Verizon at 1 and WorldCom at 2-3

⁹ IDT Initial Comments at 4.

Internet posting or email,¹⁰ the Nebraska Carriers provide written notice,¹¹ SBC provides 10 days advance notice,¹² WorldCom provides 15-day advance with potential notification via phone or email,¹³ Sprint uses direct mail, bill messages, bill inserts and postings in newspapers of general circulation,¹⁴ and Qwest posts rate changes on its website, provides an 800 number to notify customers about rate increases and occasionally provides additional forms of notice.¹⁵ IDT, whose policies also exceed the above-mentioned reserved rights, asserts that the various policies listed above demonstrate that carriers have been able to meet their subscribers' needs and expectations through various responsive means. Therefore, the Commission should not initiate a rulemaking for the purpose of mandating forms of notice that are inefficient, costly and contrary to the needs of subscribers.

In its Initial Comments, IDT also stated that if the Commission decided to undertake a rulemaking, it should not implement a 30-day notice period, as this period actually exceeded the notice required by many state public service commissions.¹⁶ Instead, IDT recommended that if the Commission were to initiate a rulemaking, it should limit the notice period to no more than seven days, as this presents sufficient time for a subscriber to switch carriers upon notice of a rate increase.¹⁷ Commenters almost unanimously agreed that if the Commission were to initiate a rulemaking, it should consider a notice period shorter than the requested 30 days, with recommendations of five

¹⁰ Verizon at 3.

¹¹ Nebraska Carriers at 4.

¹² SBC at 3.

¹³ WorldCom at 4.

¹⁴ Sprint at 3, FN 2.

¹⁵ Qwest at 3.

¹⁶ IDT Initial Comments at 5-6.

¹⁷ IDT Initial Comments at 6.

days,¹⁸ seven days,¹⁹ 10 days,²⁰ 15 days²¹ and “a day ... not weeks or a month.”²² Several commenters also noted that the proposed time limit is more restrictive than Commission’s previous rules.²³ IDT asserts that the various suggestions demonstrate how carriers are prepared to offer unique customer service solutions to meet their subscribers’ needs, and that the Commission should not initiate a rulemaking that for the purpose of imposing an automatic notice period that will not respond to the needs of each carriers’ subscribers.

Commenters also raise additional concerns about a lengthy notice period and mandatory written notice. First, it is noted, if written notice is required, the time needed to the implement the rate change and/or change in significant terms and conditions of interexchange service would greatly exceed any mandated notice period because carriers will also have to account for the time it takes to prepare the notice and deliver it to subscribers.²⁴ Second, commenters argue that advance written notice impedes competition because it prevents carriers from quickly responding to changes in the rates or terms of competitors.²⁵ IDT shares these concerns and requests that the Commission, when deciding whether to initiate a rulemaking, consider the harm to competition that mandatory advanced written notice may cause.

In its Initial Comments, IDT stated that if the Commission initiated a rulemaking, it should also consider permitting carriers to use forms of notice other than those listed in the Petition, including posting on a website, notifying subscribers by telephone call

¹⁸ Sprint at 6-7.

¹⁹ CompTel at 4-5.

²⁰ Nebraska Carriers at 8.

²¹ AT&T at 5.

²² WorldCom at 6.

²³ See, Moultrie at 2, Verizon at 3 and SBC at 4.

²⁴ See, SBC at 4 and CompTel at 5.

(including a message left on an answering machine) or email and/or publication in a newspaper of general circulation.²⁶ While carriers set forth different recommendations for alternative forms of notice including: (1) any form of written notice, including bill insert or messages printed on bills, letter or post card by bulk mail;²⁷ (2) notice only for residential subscribers where there is no electronic billing arrangement and for business subscribers if the carrier does not make notice of rate changes on a website;²⁸ (3) electronic notice for residential subscribers with electronic bills and business subscribers;²⁹ and (4) a “What’s New” listing on the company website,³⁰ the general consensus is that carriers should be free to determine the form of notice best suited to their subscribers.³¹ IDT supports these requests for freedom to determine the form(s) of notice that best responds to a carrier’s subscribers’ needs and expectations. Therefore, if the Commission initiates the requested rulemaking, IDT requests that the Commission consider these alternative forms of notice in addition to those proposed by the Petitioners.

Other commenters, most notably Qwest, detail how significant the financial impact a mandatory written notice will have on carriers and, ultimately, subscribers.³² Because Petitioners are more concerned with rhetoric rather than results, Petitioners have completely failed to consider the costs of advanced written notice. If the Commission initiates the requested rulemaking and ultimately implements Petitioners’ requested rule, consumers would ultimately pay higher rates to offset the carriers’ increased costs for

²⁵ See, Verizon at 2, SBC at 4, ASCENT at 2 and Americatel at 4.

²⁶ IDT Initial Comments at 6.

²⁷ Qwest at 9.

²⁸ AT&T at 5-6.

²⁹ Qwest at 9-10.

³⁰ Americatel at 10.

³¹ See, WorldCom at 7-8, AT&T at 6-7, Nebraska Carriers at 7-8 and CompTel at 6.

³² See, AT&T at 5, Nebraska Carriers at 4, Moultrie at 4, WorldCom at 6, ASCENT at 2, Qwest at 7 and Americatel at 11.

providing written notice. In what would be a truly ironic outcome for a rulemaking sponsored by alleged consumer interest groups, subscribers' rates would increase to offset the costs of written notices for rate decreases (which would have to be delayed until thirty days notice was given.) IDT requests that if the Commission initiates a rulemaking, it undertake a cost/benefit analysis that weighs the cost of preparing and disseminating notice for changes in rates and significant terms and conditions of interexchange service against the benefits gained by such notice.³³ Furthermore, IDT asserts that if the Commission applies a cost/benefit analysis to written notices for rate decreases or changes in rates and terms that do not result in rate increases or increased subscriber obligations, it will be compelled to conclude that no notice is warranted for such rate and term changes.

In its Initial Comments, IDT requested that if the Commission were to initiate a rulemaking, it limit notice for changes in "material terms" to rate increases or changes in terms and conditions that increase rates or add new or increased subscriber obligations.³⁴ Several carriers commented on the definition of a "material term," with one carrier stating that it is unclear what a material change is,³⁵ while another recommended that a material change be defined as a rate increase³⁶ while yet another defined it as a 5% increase over a 12 month period or a change in terms and conditions that has an equivalent effect.³⁷ For the reasons stated in its Initial Comments and further supported by the various carriers' discussion of the cost impact of providing notice, IDT maintains that if the Commission initiates a rulemaking to consider a notice provision, the

³³ See also, Sprint at 5.

³⁴ IDT Initial Comments at 5.

³⁵ Americatel at 7.

³⁶ See, Nebraska Carriers at 6-7, WorldCom at 5 and Qwest at 8.

rulemaking should limit the scope of “material terms” to rate increases or changes in terms and conditions that increase rates or add new or increased subscriber obligations.

While many carriers oppose a rulemaking, some commenters support a ruling on certain narrow grounds.³⁸ Specifically, these carriers support a rulemaking for the purpose of adopting a single national standard to preempt contrary state notice regulations.³⁹ IDT is sympathetic to these arguments and shares the concern that some state commissions have construed detariffing as authorization to regulate interstate services.⁴⁰ However, IDT asserts that because these state commissions are acting outside the scope of their authority, the Commission, in its denial of Petitioners’ request, can also inform these state commissions that the FCC’s decision to detariff interstate services was not an invitation for state utility commissions to regulate these services. IDT does not believe the Commission is required to initiate a rulemaking to remind state commissions of the limit of their authority. However, if the Commission concludes that the only manner in which it could accomplish this was through a rulemaking, IDT would not oppose a rulemaking narrowly tailored for this purpose.

In addition to this primary concern, commenters also recommend that a rulemaking account for certain other principles. Specifically, the commenters request that: (1) any notice provisions implemented by the Commission be limited to detariffed services, presubscribed customers and direct dialed calls;⁴¹ (2) business subscribers should be excluded;⁴² and (3) notice for international rates should be rejected as too

³⁷ AT&T at 11.

³⁸ *See*, AT&T at 2, WorldCom at 8, Qwest at 2-6, CompTel at 6-9 and Sprint at 1-2.

³⁹ *See*, AT&T at 2, WorldCom at 8, Qwest at 2-6, CompTel at 6-9 and Sprint at 7.

⁴⁰ *See*, Qwest at 4.

⁴¹ AT&T at 3-5 and CompTel at 4.

⁴² WorldCom at 4, Qwest at 8-9 and CompTel at 4.

burdensome.⁴³ While IDT generally opposes the initiation of a rulemaking, we do agree that if the Commission were to initiate a rulemaking, it should consider all of the aforementioned service types and subscribers as beyond the scope of any notice rules.

Finally, despite the fact that the Petition was allegedly filed in order to prevent state public service commission from being forced to handle an onslaught of consumer complaints, only three state public service commissions – Alabama, Missouri and Montana –filed comments (totaling nineteen paragraphs) in this proceeding. None of the comments claim, let alone demonstrate, that the notice provisions permitted under the new detariffing regime has had any negative impact on their respective commission or constituents. The Missouri Public Service Commission even notes that the Petitioners’ request for notice far exceeds notice required by Missouri law.⁴⁴ When combined with the other factors mentioned in our Initial and Reply Comments, the lack of demonstrated need or interest in the rulemaking on the part of state public utility commissions compels the Commission to reject Petitioners’ request for a rulemaking.

⁴³ WorldCom at 5, Americatel at 3 and CompTel at 4.

⁴⁴ Missouri at 3.

CONCLUSION

For the reasons stated herein, IDT requests that the Commission deny Petitioners' request to initiate a rulemaking to institute a minimum notice requirement to be imposed for changes in rates and significant terms and conditions of interexchange service. IDT also requests that the Commission, in its denial, reaffirm its authority to regulate – and deregulate – interstate interexchange service by stating that the Commission's recent detariffing of such services did not grant any authorization to state public utility commissions to regulate interstate interexchange services. Finally, IDT requests that if the Commission decides to initiate a rulemaking, it consider the issues raised by IDT in its Initial and Reply Comments as well as other issues raised by commenters in this proceeding.

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March 26, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of IDT Corporation was sent by U.S. first class mail, postage prepaid or overnight mail, on this the 26th day of March 2002 to the parties on the attached pages.

Wendy Moreano

Dated: March 26, 2002

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